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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,192	02/13/2002	James M. Brugger	435800	9861
27717	7590	06/15/2004	EXAMINER	
SEYFARTH SHAW 55 EAST MONROE STREET SUITE 4200 CHICAGO, IL 60603-5803			NGUYEN, ANH TUAN TUONG	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/076,192	Applicant(s) BRUGGER ET AL.	
	Examiner Anh Tuan T. Nguyen	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 8,9,11-13,16-18,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 14 and 15 is/are allowed.
- 6) ☒ Claim(s) 1,4-7,19-22,26 and 27 is/are rejected.
- 7) ☒ Claim(s) 2,3,10 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 5 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Petre (US 4,444,198).

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 6, 7, 20-22, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petre in view of Dawe (US 4,519,792).

This section of the rejection can be found in a prior Office action.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petre in view of Dawe as applied to claim 1 above, and further in view of Brugger et al (US 5,693,008).

This section of the rejection can be found in a prior Office action.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 5,061,365 and claim 3 of U.S. Patent No. 5,520,640. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim a blood set with a branch tube and a flattened, flexible tube.

Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the art as applied immediately above in view of Brugger et al (US 5,693,008). See discussion above regarding Brugger clamps.

Claims 5, 19, 20, 26, and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, and 6 of U.S. Patent No. 6,383,158. Although the conflicting claims are not identical, they are not patentably distinct

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from each other because they both claim a blood set having branch tubing with a pressure transducer, an I.D. of 5mm and a flow-resisting constriction.

Claims 5, 19, 20, and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 4 of U.S. Patent No. 6,514,225. Although the conflicting claims are not identical, they are not patentable distinct from each other because they both claim a blood set having branch tubing with an I.D. of 5mm and a flow-resisting constriction.

Allowable Subject Matter

4. Claims 14 and 15 are allowed.
5. Claims 2, 3, 10, and 25 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments received at the Office on 03/15/2004 have been fully considered but they are not entirely deemed to be persuasive.
7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "for the transfer of blood", "blood pressured is being measured", "for connection to a source of physiological, cell free solution and to a pressure transducer", and "for retaining a blood-solution interface ... spaced from said source of solution and said pressure transducer") are not positively claimed but only recited in the rejected claim(s). Although the claims are interpreted in light of

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the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Accordingly, any arguments pertaining to subject matters not positively claimed are respectfully considered to be moot.

8. In response to the argument on page 13 that the “branch tube being substantially flattened”, the applicant’s specification discloses this limitation comprising a clamp to flatten to tube portion. Accordingly, the prior art recited meets this limitation. With response to the “presence of the groove”, previous examiner indicated this limitation (in claim 2) as being objected to and would be allowable.

9. With respect to the applicant’s response to the judicially created doctrine of obviousness-type double patenting rejections, the examiner is respectfully not persuaded. Accordingly, the applicants are respectfully reminded that timely filed terminal disclaimers in compliance with 37 CFR 1.321(c) may be used to overcome these rejections based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application

10. Therefore, claims 1, 4-7, 19-22, 26, and 27 remain rejected. Claims 2, 3, 10, and 25 remain objected. Claims 14 and 15 remain allowable. Claims 8, 9, 11-13, 16-18, 23 and 24 remain withdrawn from consideration.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

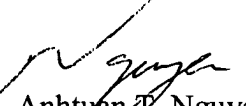
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anhtuan T. Nguyen whose telephone number is 703-308-2154. The examiner can normally be reached on Mon-Fri, 0830-1800 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anhtuan T. Nguyen
Primary Examiner
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